

The Appeals Board has limited jurisdiction to review preliminary hearing orders. K.S.A. 44-551(b)(2)(A) provides that "[i]f an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing." In addition, K.S.A. 44-534a(a)(2) lists several findings concerning issues which, if in dispute, are to be considered jurisdictional and subject to review by the Board. A finding concerning the furnishing of medical treatment is not one of those jurisdictional issues.

K.S.A. 44-534a gives an administrative law judge the authority to conduct a preliminary hearing which shall be summary in nature and "[u]pon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation" (Emphasis added.) The employee's entitlement to compensation is not disputed. What is disputed is the Administrative Law Judge's authority to grant the denial of the medical benefits as requested by respondent at the preliminary hearing. Claimant fails to identify what makes this issue jurisdictional and, therefore, appealable to the Appeals Board from a preliminary order.

K.S.A. 44-534a makes the awarding of preliminary benefits discretionary and not mandatory. Accordingly, the issue raised by claimant concerning whether or not the requested medical treatment should have been ordered paid by respondent, is not a jurisdictional issue. Therefore, the issue is not appealable to the Appeals Board from a preliminary hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review the February 23, 2001, Order Denying Medical Treatment at this juncture of the proceeding and that this appeal should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of May 2001.

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director